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VOL. 25 DECEMBER, 1949 No. 4

A WORD FROM THE PRESIDENT

Clarence B. Runkle

THE controversy over the location of the proposed Superior Courts building, now scheduled for the north side of Temple Street, between Hill Street and Grand Avenue, further demonstrates that the problem of getting a new court house has many facets.

Civic Center planning started in Los Angeles in 1906. By 1946, the Plan called for a court house on the west side of Spring Street, between the Hall of Justice and Sunset Boulevard. A proposed bond issue to finance it failed to get the required two-thirds majority at the election held that year.

Thereupon, the Los Angeles Civic Center Authority, limited to simply advisory functions despite its name, was formed with three members appointed by the Mayor and three by the Board of Supervisors. Upon its recommendation the Supervisors employed an architect, Burnett C. Turner, to study the civic center problem. He worked under the supervision of the Civic Center Committee of the Southern California Chapter of the American Institute of Architects. This Committee and Mr. Burnett proposed a new civic center plan and rendered an extensive report dated April 1, 1947. While this report was not adopted by either the City Council or the Board of Supervisors because of some detailed objections, its basic ideas became generally accepted.

The Plan proposed in this report envisaged a Mall extending directly west from the City Hall, flanked on each side by various buildings. This feature has persisted as basic in all subsequent planning.

The Superior Courts building was scheduled for the northwest corner of Temple and Broadway. The order for condemnation proceedings to acquire this site was issued October 2, 1947. The Municipal Courts building was to be located just west of this site.

After further study, Wayne Allen, acting for the Supervisors, reported on March 25, 1948, recommending a reversal of the two building locations. A meeting of the Board of Supervisors was held April 22, 1948, to consider this recommendation and various parties, including our Association's Court House Committee, appeared prepared to oppose the change. The reasons given for the switch seemed so compelling that the opponents yielded without a fight. Since that time the Municipal Courts building has been scheduled for the Broadway to Hill site and the Superior Courts building for the Hill to Grand site, both on the north side of Temple Street.

Action number 542937, to condemn the remainder of the property, out to Grand Avenue, was filed April 2, 1948, and the last final judgment therein was entered June 1, 1949.

The Board of Supervisors, after bond issues were defeated twice by the voters, were inclined to abandon the Court House project. Our Association's Special Court House Committee worked most diligently for several years and, in collaboration with the Judges' Committee and others, succeeded in persuading the Supervisors to proceed by financing out of tax revenues. At no time has our Association taken any position, through its Court House Committee, its Board of Trustees or otherwise, respecting the Court House site. The Supervisors, however, are probably entitled to construe our vigorous efforts for consummation of the project as announced, as at least a tacit approval of the site selected and for which all necessary property has been acquired by negotiation or condemnation.

Your Board of Trustees is now concerned about the possible fatal effect on the project within any foreseeable period, of any campaign to change the site. A special committee consisting of two Board members and the chairman of the Special Court House Committee, is now investigating the matter.

In the meantime, our members are requested to keep an open mind on the problem.

CLARENCE B. RUNKLE.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS AT CALIFORNIA LAW— LEGAL AND PRACTICAL ASPECTS

Richard H. Keatinge*

INTRODUCTION

Richard H. Keatinge

THE continued extension of the business correction which began in the fall of 1948 has brought with it a concurrent rapid increase in the number of business failures and business adjustments. Recent figures show that business failures in the City of Los Angeles alone have increased from a quarterly average of approximately 15 during 1945 to over 135 during the first quarter of 1949.[1] Paralleling the rapid increase in the number of business failures in the Los Angeles area has, of course, been a very substantial rise in the work of the local bankruptcy courts; bankruptcy filings for the Southern District of California for the first quarter of 1949 (587) exceeded bankruptcy filings in the entire State of New York (581) for the same quarter.[2]

Nearly as substantial during recent months, however, has been the growth in the number of assignments for the benefit of creditors and in the number of other types of voluntary adjustments between debtors and creditors. It is, of course, somewhat difficult to estimate the actual number of assignments and voluntary adjustments which have been made during the past few months because in many cases such assignments and adjustments are made without the intervention or assistance of any mediating body. Some indication of this growth may, however, be ascertained from the figures of the largest organization in Los Angeles engaged in adjusting relationships between debtors and creditors. The num-

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[1]Security-First National Bank of Los Angeles, Monthly Summary of Business Conditions in Southern California, Vol. 28, No. 7 (July 14, 1949).

[2]Administrative Office of the United States Courts, Quarterly Report for the Third Quarter of the Fiscal Year Ending June 30, 1949.

ber of assignment cases handled by this organization has increased rapidly in the past several years, from 13 in 1945 to 104 in the first six months of 1949.[3]

It will be the purpose of this article to discuss briefly the legal and practical aspects of assignments for the benefit of creditors, with particular reference to California law, and to give a brief résumé of suggestions which have been made for the improvement of certain defects in the California statutes covering assignments.

I.

TWO TYPES OF ASSIGNMENTS FOR BENEFIT OF CREDITORS RECOGNIZED BY CALIFORNIA COURTS

The California courts recognize two kinds of assignments for the benefit of creditors—statutory assignments for the benefit of creditors provided for in the California Civil Code, and common law assignments for the benefit of creditors having their roots in the principles of the law of trusts. The nature of, and distinction between, the two types of assignments for the benefit of creditors are well set forth in the leading California case of *Jarvis v. Webber*,[4] wherein it is stated (p. 98):

> "* * * We think it must be conceded, therefore, that two kinds of transfers or assignments for the benefit of creditors generally are recognized in the code sections we have enumerated. One is the statutory assignment for the benefit of creditors, enabling an insolvent debtor, through his assignee, to provide for the immediate conversion of the assigned property, or the disposal thereof, and the distribution of the proceeds ratably among the creditors. (Civ. Code, §3449, *et seq.*) * * * The other form of transfer is one which, while containing certain characteristics, is, in effect, only a conveyance in trust by way of paying or securing certain obligations of the debtor. These transfers are not invalid because they do not conform to the provisions of the sections of the code relating to assignments for the benefit of creditors. (Civ. Code, §§3432 and 3451; *Heath v. Wilson, supra.*) If made for the benefit of creditors generally, such conveyances are protected in their operation as to delivery, and continued change of possession of the property transferred, by the exception contained in section 3440 of the code as amended. * * *"

[3]These figures have been made available through the courtesy of M. W. Engleman, Manager, Adjustment Bureau, Los Angeles Credit Managers Association.

[4]*Jarvis v. Webber*, 196 Cal. 86, 236 Pac. 138 (1925); see also *Brainard v. Fitzgerald*, 3 C. (2d) 157, 44 P. (2d) 336 (1935).

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THE SHARON CASES: A LEGAL MELODRAMA OF THE EIGHTIES

By Donald W. Hamblin*

Donald W. Hamblin

THE celebrated and notorious Sharon cases deserve high rank among the great legal battles of the first century of California jurisprudence. Many of the most eminent lawyers of the period participated in this struggle for enormous stakes. Innumerable legal questions in such fields as divorce, equity, evidence, procedure and jurisdiction, both civil and criminal, were raised and decided, many of them for the first time. Over a period of nearly ten years the California Supreme Court, the Supreme Court of the United States and the United States Circuit Court in California, in phases of what may be regarded as a single controversy, rendered no less than twenty-three decisions, aggregating 501 pages. Within and outside of the reports is a legal melodrama which deserves retelling, more because of the colorful and spectacular nature of its principal characters and events than because of the present impact of the cases on the law.**

Each of the four main characters involved, excepting Sarah Althea Hill, the woman in the case, were famous before the earliest events in the drama took place.

William Sharon arrived in California as a "Forty-Niner," and for many years was a successful real estate broker. In the 60's he opened the Virginia City Branch of Ralston's famous Bank of California. His speculations in the famous mines on the Com-

*Mr. Hamblin, a member of the Los Angeles Bar Association, was born in Oneida, New York. He received his A.B. degree (cum laude—Phi Beta Kappa) from Stanford University in 1929 and his LL.B. from Harvard Law School in 1932. He served nearly four years in the Army Air Forces and held the rank of Major upon release. For his services as "briefer" to the Commanding General and the Air Staff, he received the Legion of Merit from General H. H. Arnold. Since 1946 he has been practicing in partnership with the firm of Newmark and Hamblin.

**For this reason all of the cases may be cited here in a single footnote. The most important, both from the standpoint of the story and the legal points determined, are: *Sharon v. Sharon*, 75 Cal. 1; *Sharon v. Sharon*, 79 Cal. 633; *Sharon v. Sharon*, 84 Cal. 424; *Sharon v. Hill*, 26 F. 337, 11 Sawyer 290; *Sharon v. Terry*, 36 F. 337, 13 Sawy. 387; *Cunningham v. Neagle*, 135 U. S. 1, 34 L. Ed. 55. Other decisions are: *Sharon v. Sharon*, 67 Cal. 185; *Sharon v. Sharon*, 68 Cal. 29; *Sharon v. Sharon*, 68 Cal. 326; *Sharon v. Sharon*, 77 Cal. 102; *Sharon v. Sharon*, 84 Cal. 433; *Sharon v. Hill*, 20 F. 1, 10 Sawy. 48; *Sharon v. Hill*, 10 Sawy. 394; *Sharon v. Hill*, 23 F. 353, 10 Sawy. 634; *Sharon v. Hill*, 10 Sawy. 666; *Sharon v. Hill*, 1 Sawy. 122; *In re Terry*, 13 Sawy. 440; *In re Terry*, 13 Sawy. 598; *U. S. v. Terry*, 14 Sawy. 44; *In re Field*, 14 Sawy. 193; *In re Neagle*, 14 Sawy. 232; *Ex parte Terry*, 128 U. S. 289, 32 L. Ed. 405; *Terry v. Sharon*, 131 U. S. 289, 33 L. Ed. 94.

stock Lode presently brought him a vast fortune and considerable political and financial power. When he met Miss Hill he was United States Senator from Nevada and a widower of sixty.

> "In his composition there appears to be a vein of sentiment and love of pleasure that has led him into illicit relations with the other sex and given him the reputation of a libertine."*

Sarah Althea Hill was born in Missouri of good parentage. However, her parents died when she was six and she was brought up under a very slack rein by her grandfather. That she was a young woman of great beauty and temperament was acknowledged by all. She was also scheming and determined, passionate and resourceful, rash and impetuous, both in love and with money. It is reported that she was sufficiently flirtatious to be engaged to three men at the same time. When she came of age she inherited what was a very substantial fortune for the period. She suffered financial losses and an unhappy love affair in Missouri, and came to California in 1870 resolved to better her marital and financial situation.

THE LAWYER CHARACTERS

David S. Terry was a violent and hot-headed Southerner, born in Kentucky. He came to California from Texas in 1849, and after a short experience at mining, took up the practice of law in Stockton. He had considerable ability and no little political acumen, and in 1855 was elected a Justice of the Supreme Court of California. He served as Chief Justice from 1857 to 1859. Terry was aggressive and matched strong prejudices with tremendous physical stature and strength. He was the victor in several duels, the most notable (and notorious) of which was a fatal affair in 1859 with David G. Broderick, then senior United States Senator from California. The mind of today can scarcely encompass a duel with pistols between a United States Senator and the Chief Justice of a State Supreme Court; but the event is indicative of the type of society and life of which our chief characters had been and were a part. The killing of Broderick marked one of the turning points in Terry's career, since it evidently cost him any future prospects of political or judicial office. After

*_Sharon v. Hill_, 26 F. 337, 348, per Deady, J.
Another classic by Judge Deady really deserves more than a footnote: ". . . it must not be forgotten that, as the world goes and is, the sin of incontinence in a man is compatible with the virtue of veracity, while in the case of a woman, common opinion is otherwise." (p. 360.)

service with the Confederacy in the Civil War and other vicissitudes, the former Chief Justice returned to the practice of law in Stockton.

Stephen J. Field was the most famous and distinguished of the characters and a member of a celebrated family. His brothers, Cyrus, David Dudley, and Henry, were all noted for their accomplishments in various endeavors. Field, like Sharon and Terry, was a Forty-Niner. After spending a few days in San Francisco, he went on to Marysville, where he speedily commenced his California political career by running for first alcalde, the chief judicial office. Field relates in his *Reminiscences* that the chief objection urged against him was that he was a newcomer—that he had been in Marysville only three days, whereas his opponent had been there six. However, Field was elected by nine votes. A few months later he was elected to the California legislature, and in 1857 to the California Supreme Court. He served for two years with Judge Terry, and succeeded the latter as Chief Justice. He exerted vast influence upon California law and legal institutions before President Lincoln appointed him to the Supreme Court of the United States. He had served on the high court with distinction for more than a quarter of a century when his judicial duties brought him into the later phases of the Sharon cases.

THE WHIRLWIND ROMANCE

Sarah Althea Hill lived unsensationally in San Francisco for ten years before she met Senator Sharon. Like everyone else in San Francisco, she had been speculating in mining stocks, and had moderate success. One spring day in 1880 the young woman encountered Sharon in his bank, and after a discussion of mining stocks, they talked of more personal matters. Not long after, the Senator called on Sarah at her rooms in the Baldwin Hotel, and speedily made himself agreeable by singing "Auld Lang Syne," and reciting poetry, including Byron's sentimental "Maid of Athens." Later in the evening the elderly philanderer invited Sarah to become his mistress. Sarah claimed that the proposition offered by the Senator was a thousand dollars a month and his daughter's white horse, but said she had declined the offer. Sharon, in the later court proceedings, denied Sarah's story, but conceded that he had paid Sarah five hundred dollars a

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WHAT'S NEW AT THE COUNTY LAW LIBRARY

Amdur.	Patent Office Rules and Practice. 1949.
	Annual Survey of American Law, Annual Volume.
Arnoldy.	Outline of the "California" Law of Real Property. 1949.
Auerbach.	The Admission and Resettlement of Displaced Persons in the United States. 1949.
Balter.	Robinson-Patman Price Act. 1949.
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Wood.	Regulation of Subversives. 1948.

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Silver Memories

Compiled from the Daily Journal of December, 1924.
By A. Stevens Halsted, Jr., Associate Editor.

A. Stevens Halsted, Jr.

Reassignment of Superior Court Judges for next year has been made as follows: Judge **L. H. Valentine** will act as Presiding Judge to succeed Judge **John M. York,** who will try civil cases. Judge **Victor R. McLucas** and Judge **Walter Guerin** will hear civil non-jury cases. Of the newly elected judges, **Walter Gates** will take the order-to-show-cause court, now handled by Judge Guerin, together with the lunacy commission. Judge **Hugh J. Crawford** will preside in the law and motion department. Judge **J. W. Summerfield** will continue to hear default divorce cases and Judge **Harry R. Archbald** will retain the juvenile court.

* * *

Attorney General **Harlan F. Stone** has issued an opinion on California community property, upholding the ruling of former Attorney-General **Daugherty,** that a husband and wife in California are entitled to file separate income tax returns, and thus affect a reduction of the surtax. It is estimated that refunds dating back to 1918 totalling $130,000,000 will result.

* * *

The College of Law, University of Southern California, will have 500 students in the day and evening classes during the coming winter quarter, predicts **Charles E. Millikan,** Assistant to the Dean. Two justices of the appellate bench, **Frederick W. Houser** and **Gavin W. Craig,** will give courses in legal ethics and water rights. Members of the local bar who will lecture are **Lloyd Wright** on corporation practice; **Harry J. McClean** on criminal procedure; **Clair S. Tappaan** on historical jurisprudence; **Glenn E. Whitney** on legal research; and **Lawrence L. Larrabee** on equity.

Applications have been filed with the Board of Supervisors by 27 candidates for the two court vacancies created by the election last month to the Superior Bench of Police Judge **Hugh J. Crawford** and Justice **J. Walter Hanby.** Three women filing are Mrs. **Alice Magill,** Deputy City Prosecutor, and Mrs. **Georgia Bullock,** and Mrs. **Oda Faulconer,** practicing attorneys. Among male candidates are **Joseph Marchetti,** Deputy District Attorney; **Perry Thomas,** Deputy City Attorney; **Clifford L. Thomas,** Deputy City Prosecutor; **Milton H. Silverberg, William Crawford,** a brother of Judge Crawford; **Dailey S. Stafford, George W. Homan, W. Maxwell Burke,** former deputy district attorney; Captain **A. C. Jewell,** head of the civil department of the Sheriff's office; **Arthur Crum, George Glover,** Deputy District Attorney; **J. Allen Frankel,** and **Joseph W. Ryan,** Deputy District Attorney.

* * *

In his final report as Chief of Staff to the Secretary of War, General **John J. Pershing** advocates an enlarged air service. Pershing says he believes, however, that the infantry "still remains the backbone of attack" and that other branches of the service should be subsidiary to it. "Black Jack" expressed opposition to the idea of a separate air department ranking equally with the present War and Navy Departments, as under the British system.

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Pointing out the increased scope of the jurisdiction of Federal Courts caused by recent legislation, **Charles C. Montgomery** of the Faculty of the University of Southern California Law School addressed the Los Angeles Bar Association on Federal Equity Suits. Professor **Max Radin** also delivered an address entitled "A Theory of Judicial Decisions."

* * *

The report exists that Senior Associate Justice **Joseph McKenna,** who has passed his eighty-first birthday, will resign from the Supreme Court of the United States. Mr. Justice McKenna was appointed to the Court from California in 1898 by President McKinley, having served in the State Legislature, in Congress and on the Federal Circuit Court Bench before becoming Attorney-General in the McKinley cabinet

before his appointment. Mr. Justice McKenna having been appointed in California, the name of Secretary **Wilbur** of the Navy Department, former Chief Justice of the Supreme Court of California, is being mentioned for the place as well as for the Federal bench in California. The territory west of the Mississippi River now has four members of the Court, including Associate Justices **McKenna, Van Devanter** of Wyoming, **Sutherland** of Utah and **Butler** of Minnesota; the South two in Associate Justices **McReynolds** and **Sanford,** and Massachusetts two in Associate Justices **Holmes** and **Brandeis.**

* * *

John W. Davis, defeated Democratic nominee for President last month, will return to the practice of law in New York City. Upon his nomination for President last summer, Mr. Davis resigned from the law firm of Stetson, Jennings, Russell & Davis which he joined in 1921 on finishing his service as Ambassador to Great Britain.

* * *

Japanese officials are doubtful of the success of another disarmament conference. The Japanese foreign office has expressed willingness to send delegates to a conference if summoned by President Coolidge, but point out that the Japanese public believe the present armament of Japan the lowest possible consistent with national security. They believe the government would probably meet with domestic difficulties if it should attempt to effect further disarmament.

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Mayor **Cryer** has appointed a citizens committee of three: **William Gibbs McAdoo,** former Secretary of the Treasury, Chairman; **Nathan Newby** and **Joseph Scott,** both attorneys, who will seek to bring about a settlement of the railroad passenger terminal problem. Four possible solutions suggested are: construction of a new station at the Plaza; use of the present Southern Pacific Arcade station by all railroads; construction of a station on the present Santa Fe station site; or the use of a union station on the terminal site recently purchased by the El Paso and Southwestern recently taken over by the Southern Pacific. The U. S. Supreme Court in a recent opinion by Chief Justice Taft held that the California Railroad Commission has no power to require the three trans-

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ASSIGNMENTS FOR CREDITORS

(Continued from page 100)

Both statutory and common law assignments for the benefit of creditors will be discussed herein; however, it should be borne in mind initially that only the common law assignment for the benefit of creditors is of practical importance in California—this in spite of the existence of detailed provisions in the Civil Code covering statutory assignments. One writer has noted that the statutory assignment has not been used in San Francisco and Oakland for over 30 years;[5] this writer has been advised that the statutory assignment has never been used by the largest adjustment organization in Los Angeles since the organization of its predecessor in 1883.[6]

II.

STATUTORY ASSIGNMENTS FOR THE BENEFIT OF CREDITORS UNDER CALIFORNIA LAW

A. *Source of Statutory Assignments*—The statutory provisions of the California Civil Code dealing with assignments for the benefit of creditors stem in large part from the Civil Code of 1872; although many of the sections have been amended since that time, the last amendment to the sections was made in 1905.[7] The failure further to amend these statutory provisions has been due, on the one hand, to the prevailing conception that state statutes governing assignments for the benefit of creditors are insolvency statutes superseded by the provisions of the National Bankruptcy Act,[8] and, on the other hand, to the fact that it has proven possible

[5]Lieberman, *A Proposal for Strengthening the California Statute Concerning Assignments for the Benefit of Creditors* (1948), 36 CALIF. L. REV. 586, 587.

[6]Information supplied by officials of the Los Angeles Credit Managers Association.

[7]CAL. CIV. CODE, Secs. 3449-3473, inclusive.

[8]See, for example, Dennett, *Why Not Restore Our State Insolvency Law?* (1937), 12 CALIF. S. B. J. 38.

to make use of less cumbersome common law assignments for the benefit of creditors without undue hardship, even after giving full effect to applicable statutory provisions.

Sections 3449-3473 of the California Civil Code contain the statutory provisions covering assignments for the benefit of creditors. In brief, these sections provide that a statutory assignment must be in writing, must contain a list of the creditors of the assignor, their place of residence, the amounts of their respective demands, and the amounts and nature of any security therefor. The assignment must be made to the sheriff of the county where the assignor resides (or where the assigned property, or some of it, is situated in the case of non-resident assignors). It is the sheriff's duty forthwith to take possession of all the property assigned to him and keep the same until delivered by him to the assignee elected at a meeting of the assignor's creditors called for that purpose by notice published and mailed by the sheriff.

While the enumerated sections of the Code cover in rather minute detail the procedure which must be followed in perfecting a statutory assignment for the benefit of creditors, lengthy discussion of these provisions does not appear warranted in view of their limited practical effect. There is, however, one respect in which

Editor in charge of this issue—A. Stevens Halsted, Jr.

a number of the statutory provisions regarding assignments for the benefit of creditors become quite important; that is in their effect on *common law* assignments. The courts have held that our code provisions not only set out the requirements for statutory assignments, but at the same time set up certain restrictive conditions surrounding the use of common law assignments.[9] These statutory conditions and restrictions are of more importance than the statutory form of assignment itself; their nature is outlined below in connection with the discussion on defects in present statutory law.

B. *Disadvantages of Statutory Assignments*—The statutory form of assignment for benefit of creditors provided for in the California Civil Code possesses many disadvantages which greatly increase the cost and difficulty of administration of statutory assignments. The detailed provisions regarding initial assignment to the sheriff with subsequent reassignment to an assignee elected by the assignor's creditors, the requirement for detailed listing of the names of all creditors and the amounts due and owing to such creditors, the necessity for the making of a complete inventory by the sheriff and the position of the courts that such statutory assignments will fail unless the provisions of the statute are followed in detail are factors which have led to the exclusive use of the common law assignment by the larger adjustment bureaus in both the northern and southern parts of the state.

III.

COMMON LAW ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

A. *Source of Common Law Assignments*—The right to make an assignment for the benefit of creditors has long existed at common law independent of, and prior to, the enactment of statutes regulating and governing such assignments.[10] Common law assignments are recognized in some of those states (including California) in which a statutory form of assignment for the benefit of creditors is provided by statute.[11] The legal principles governing the validity of a common law assignment for the benefit of credi-

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[9] *Jarvis* and *Brainard* cases, cited *supra*, note 4.

[10] 2 PERRY, TRUSTS *and* TRUSTEES (7th ed.), Secs. 585-602; WARVELLE, ABSTRACTS (4th ed.), Sec. 294.

[11] See, for instance, 2 PERRY, *op. cit.*, *supra*, note 10; see also the *Jarvis* and *Brainard* cases, cited *supra*, note 4.

tors arise from the law of conveyances and trusts, particularly the latter.[12]

B. *Advantages and Disadvantages of Common Law Assignments*—The greatest advantages of the common law assignment for the benefit of creditors are those of simplicity and speed. All a debtor need do to make a common law assignment for the benefit of creditors is to execute a simple written instrument providing that all of the debtor's property is thereby transferred in trust to an assignee for the benefit of the assignor's creditors;[13] such an instrument provides for ratable distribution to the assignor's creditors and return of any surplus proceeds to the assignor. Since no prior notice or publication of such intention to assign is required under the provisions of Section 3440 of the Civil Code, the entire transaction may be consummated in a few minutes.

Another advantage urged on behalf of the common law assignment as compared to the statutory assignment and the bankruptcy proceeding is the relatively inexpensive method of its operation and administration.[14] Since the technical requirements of the statutory assignment and the bankruptcy proceeding are eliminated by use of the common law assignment, the assignee is enabled to take immediate possession of the property of the assigning debtor and sell such property without delay, probably realizing the greatest possible return for creditors.

It should be noted, however, that the fees charged by non-profit credit groups who liquidate and distribute the proceeds of assigned assets appear at first glance to be greatly in excess of the scale of fees provided by the Bankruptcy Act.[15] As is pointed out in a recent issue of the Journal of the State Bar of California,[16] in an estate in bankruptcy which is liquidated for $10,000, the trustee's

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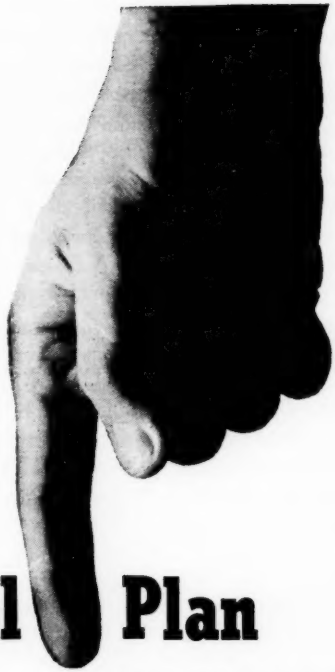
[12] *Ibid.*

[13] In the case of a partnership assignment, as distinguished from an assignment by an individual proprietorship, care must be taken to have the instrument of assignment executed by all of the partners as required by the provisions of Section 2403 of the Civil Code; if, however, any partner has abandoned the business, the remaining partners have authority to execute the instrument of assignment. *Schwartzler v. Lemas*, 12 C. (2d) 54, 82 P. (2d) 419 (1938); *Richlin v. Union Bank & Trust Co.*, 197 Cal. 296, 240 Pac. 782 (1925).

[14] For example, see Billig, *What Price Bankruptcy: A Plea for "Friendly Adjustment"* (1929), 14 CORN. L. Q. 413, 419; also Billig, *Extra Judicial Administration of Insolvent Estates: A Study of Recent Cases* (1930), 78 U. OF PA. L. REV. 293, 305, 313. It should be noted, however, that the conclusions drawn in these two articles may not today be entirely fair to the efficacy of the bankruptcy proceeding, as a result of the great improvements made by the passage of the Chandler Act in 1938.

[15] 11 U. S. C., Sec. 76.

[16] Report of the Committee on Bankruptcy of the State Bar of California (1948), 24 CALIF. S. B. J. 194.



OUR Marshal Plan ...SAVES YOUR TIME

MARSHALING estate assets is a necessary but time-consuming duty. We recognize the value of a lawyer's time, and we do not waste it on administrative details of a business nature which we, as an experienced, professional executor, can perform. We shall welcome an opportunity to be associated with you on this basis, in the efficient settlement of your clients' estates.

UNION BANK & Trust Co. *of Los Angeles*

normal compensation will be only $240.00, and the fee for any excess over $10,000 will equal only 1 per cent of such excess; this compares with a fee of $750.00 fixed by credit groups for the processing of an assignment case containing assets in the amount of $10,000.00. These figures are not, however, comparable, inasmuch as the figure for the non-profit credit group includes all normal fees and expenses (other than out-of-pocket costs of the assignee), whereas the fees of the attorneys for the receiver and the trustee in a bankruptcy proceeding, plus court costs, will ordinarily result in the costs of a bankruptcy proceeding being considerably in excess of those of a comparable assignment case.

Either a statutory assignment or a common law assignment for the benefit of creditors does, however, constitute an Act of Bankruptcy,[17] and any non-assenting creditor is, therefore, at liberty at any time within four months from the date of the assignment to file a petition in involuntary bankruptcy against the debtor. Thereupon, the entire assets of the assignor will pass from the hands of the assignee to a receiver or trustee in bankruptcy.

IV.

SUMMARY OF DEFECTS IN THE LAW GOVERNING ASSIGNMENTS FOR BENEFIT OF CREDITORS, BOTH STATUTORY AND COMMON LAW, AND SOME SUGGESTED IMPROVEMENTS[18]

Although the relative advantages of the common law assignment have resulted in its use to the almost complete exclusion of the statutory assignment, there are certain defects and problems inherent in the use of either form of assignment, and certain suggested improvements for remedying such defects, which are deserving of brief discussion.

(1) An assignee for the benefit of creditors is not empowered under the law as it stands at present to take legal action to defeat preferential transfers made by the assignor to particular creditors or preferential liens acquired by particular creditors immediately prior to the general assignment. This is a serious defect, and means that in many sizeable cases the remaining non-preferred

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[17]30 STAT. 544 (1898), as amended, 11 U. S. C., Sec. 21 (1946).

[18]The material contained in this brief summary of defects in the present law governing assignments for the benefit of creditors, and suggested improvements to remedy such defects, is largely taken from the article by Lieberman, *supra*, note 5. The writer wholeheartedly endorses Mr. Lieberman's suggestions and feels that they should be made a part of the legislative program of the State Bar to be presented at the next session of the Legislature.

creditors will be forced to file a bankruptcy petition in order that the trustee in bankruptcy may void such transfers or liens. The solution to this particular defect would appear to lie in giving the assignee power, within limits, to set aside preferential transfers or liens made or acquired within a specified period prior to the general assignment.

(2) A debtor executing an assignment cannot, under California law, feasibly insert in such an instrument a clause releasing him from all claims of assenting creditors. If the debtor does insert such a provision in the instrument of assignment, it will be subject to attack as a fraudulent conveyance and any non-assenting creditor may treat the assignment as void and levy on the assets in the hands of the assignee. In a bankruptcy proceeding, on the other hand, a debtor, in the absence of fraud, will receive such a release in the course of the proceeding.

The seriousness of this defect from a practical point of view cannot be over-emphasized. A debtor contemplating an assignment can have no guarantee, under present California law, that subsequent to an assignment his creditors will execute releases of their claims discharging him from further liability on such claims. If all his creditors do not subsequently execute such releases, he may, in order to obtain a complete discharge, be forced to file a bankruptcy petition with resultant additional expense to his estate.

To correct this defect, Section 3457 of the Civil Code should be changed so that the insertion of a release clause in a general assignment will not render such a transfer subject to attack as a fraudulent conveyance.

As an alternative or perhaps additional solution, the section might be amended to provide, as do the laws of certain other states, that creditors accepting any dividends disbursed by the assignee under a general assignment are deemed to have discharged the debtor from any further payment on his obligations.

The correction of the defects discussed above in the manner suggested would do much to make the assignment for benefit of creditors a more effective device for business adjustments. That such proposed amendments would not be inconsistent with the Federal Bankruptcy Act has been demonstrated with convincing clarity by the author of a recent law review article.[19]

[19]Lieberman, *supra*, note 5.

V.

PRACTICAL ASPECTS OF COMMON LAW ASSIGNMENTS FOR THE BENEFIT OF CREDITORS IN LOS ANGELES

Of much more interest to the average attorney than the legal distinctions regulating the use of statutory or common law assignments for the benefit of creditors are the practical problems involved in making and carrying through such an assignment. Many an attorney who has had no previous contact with such assignments may find himself in the near future with a client who wishes to take advantage of such relief, and it is with the needs of such

attorneys in mind that there appears below a brief discussion of the method by which such assignments are handled by the largest Los Angeles adjustment organization.[20]

The steps which need be taken by a debtor who is in financial difficulty and who has determined that he should assign his assets for the benefit of creditors are simple. His first step is to execute a short written form of assignment by virtue of which title to all of the debtor's assets is conveyed in trust to a designated officer of the organization as assignee for the benefit of the assignor's creditors, with a stipulation that any surplus remaining after the payment of all claims of creditors and expenses shall be remitted to the assignor.

Immediately after the execution of such an assignment, a field man or adjuster for the assignee visits the plant or store which has been assigned and takes actual physical possession of the property on behalf of the assignee; this ordinarily involves a change in locks, safe combinations, etc., in order to give clear evidence of the transfer of title and possession.

After the adjuster has taken possession of the premises, one of his first steps is to obtain a complete list of all the assignor's creditors. Once such a list has been obtained, the assignee sends out a first bulletin to all creditors advising the creditors that the business has been assigned, that claims should be filed with the assignee, and that a general meeting of all creditors of the assignor will be held at a date to be announced in a later bulletin. Immediately after taking possession the field man in charge of the assigned assets also arranges for insurance for their protection. If the business is to be operated, even for an interim period, it is usually also necessary for the assignee to take out public liability insurance, products liability insurance, and perhaps other forms of insurance.

The adjuster then takes a complete physical inventory of all assigned assets, schedules all accounts receivable, and obtains lists of all deposits by the assignor, including utility deposits, lease deposits, sales tax deposits, etc. Upon the basis of his investigation, he then prepares a report evaluating the assets of the business as a whole. Accounts receivable are aged and appraised in

[20]The information contained in this section of this article has been largely supplied by M. W. Engleman, Manager, Adjustment Bureau, Los Angeles Credit Managers Association. Other reputable organizations and individuals are engaged in acting as assignees for the benefit of creditors in assignment proceedings; however, inasmuch as the Association is the largest organization engaged in this field, and is a non-profit institution, its methods of operation were selected for study.

accordance with standard accounting practice, but in appraising inventory, an effort is made to determine both acquisition cost and disposable value, and, in the case of fixed equipment, both acquisition cost and present day reproduction cost. Such "double" appraisals are made in order to determine exactly what the assignor did with his money, as well as to determine the current market value of the assets. In his report the adjuster also advises what interest, if any, has been expressed by prospective purchasers, and comments as to the manner in which he feels the assets should be disposed of.

At the same time that the adjuster is inventorying the assets of the assignor, other representatives of the assignee are receiving claims from creditors, checking such claims against the amounts shown on the debtor's books, notifying all taxing agencies having claims against the debtor and requesting a final audit by deputies of such taxing agencies. Further, letters are sent out to all creditors advising them of the progress being made by the adjuster in compiling the inventory and by other employees in compelling other necessary information.

After the adjuster has made his report to the assignee, a meeting of all creditors is called at the assignee's office. At this meeting an attempt is made to bring about the appointment of a creditors' committee to assist in the disposition of the assignor's assets. Such a committee usually consists only of large local creditors, or their representatives, since it has been determined to be unsatisfactory for practical reasons to place out-of-town creditors on such committees. The debtor himself is usually present at such a meeting and is available for questioning by the creditors, although the debtor, or an officer of the debtor if the debtor is a corporation, is not examined under oath as is done at a first meeting of creditors in a bankruptcy proceeding. Experience has shown, however, that ordinarily the unsworn answers given at such proceedings are straightforward, since the debtor knows that if he does not play the game squarely that he may be forced into bankruptcy, with perhaps more serious consequences.

At the initial meeting of creditors the assignee ordinarily also asks permission to sell the assigned business in the usual course. The usual course of sale in the case of small businesses consists of (1) advertising the sale in local newspapers for a reasonable period prior to the sale date, (2) giving notice to all creditors of

the date and time for sale, (3) opening the assigned premises for inspection one or two days prior to sale, and (4) conducting the sale itself at the assignee's office on the basis of open competitive bidding, with the sale of the plant or business as a whole made to the highest bidder, subject, however, to the confirmation of the creditor's committee. Ordinarily such a bid is confirmed quickly by the creditors' committee, since the public sales of the assignee usually attract a large number of bidders and produce the best possible prices that can be expected under the circumstances.

If the highest bid obtained at the public sale is rejected by the creditors' committee, or in cases involving larger plants where such a sale is not considered feasible, it may be necessary to commission an auctioneer to dispose of the business on a piecemeal basis. The gross receipts from such sales by auctioneers are usually larger, but expenses are likewise larger, and the net receipts are not likely to be greater in the usual case involving a small business; in the disposition of larger plants, however, this method is often productive of much greater returns.

At some stage of the proceedings, the debtor usually asks for a release of all claims which his creditors may have against him

in consideration of the dividends which the creditors are to receive as a result of the liquidation of the debtor's assets. If the creditors are satisfied that the debtor has no other assets, and none are found, a release form is circulated by the assignee to all creditors which provides that assenting creditors are willing to accept the dividends to be paid to them in full settlement of their claims. Under the law as it now stands, a creditor not executing a release may, of course, receive his proportionate share of any dividend and sue the assigning debtor for the balance at some later date.

No release, however, will be granted to a debtor if any fraud is discovered, and in such event the debtor will then be placed in the position of having to file a petition in bankruptcy to obtain a discharge, with the possibility, of course, that a discharge will be denied by the Bankruptcy Court. There is the further possibility that the creditors themselves may elect to file a petition in bankruptcy in order to assure that proper action is taken against such a debtor; any such action must, of course, be taken under the provisions of the Bankruptcy Act within four months of the date of the general assignment or the assignment may not be set aside by the Bankruptcy Court.

After the assets of the assignor have been reduced to cash, the money is held for a period of four months from the date of the original assignment, except in cases where releases have been obtained from all creditors, the taxing agencies have completed their audit, all wage and other preferred claims have been filed, and there are no other remaining loose ends. In cases where all such matters have been taken care of, a partial dividend may be paid within seven or eight weeks from the date of the original assignment, with the balance of the funds being held until the end of the four months period. If bankruptcy should ensue during the four months period, the assets are turned over to the Bankruptcy Court with a complete accounting for the proceeds. If no bankruptcy proceeding is commenced within the four months period, the case is closed and the funds are distributed to the creditors with a complete itemized statement of receipts and disbursements.

The fees deducted by the assignee are based on the amount of cash actually disbursed to creditors, in accordance with the following sliding scale: 8% on the first $5,000; 7% on the second $5,000; 5% on the next $40,000; 4% on the next $50,000; 3% on all amounts over $100,000. In addition, of course, the assignee makes necessary deductions for actual expenses incurred in the temporary operation of a business, and the expenses of field adjusters, and appraisers, etc.

While the ordinary assignment case involves a relatively simple problem of liquidation, the organization does receive 10 to 12 large cases a year where the business is not actually liquidated, but where its operation is continued and the business eventually returned to the debtor after the creditors have been paid off and organizational readjustments made.

CONCLUSION

Whereas the general state of California law with respect to such assignments is not entirely satisfactory and should be improved in the respects discussed above, the common law assignment for the benefit of creditors has already been developed into an effective working tool for the liquidation and adjustment of debtor obligations in an efficient and inexpensive manner; with the correction of these statutory defects it should be possible to adjust an even greater number of debtor-creditor relationships outside of the Bankruptcy courts.

THE SHARON CASES

(Continued from page 103)

month plus other sums to be his mistress. Senator Sharon owned the Palace Hotel and maintained a suite of rooms there. He kept Sarah at the Grand Hotel across the street, which he also owned, the Grand being conveniently connected with the Palace by a bridge above the street.

The affair between Sarah and Sharon went well enough for a little over a year before there was a rupture. Finally, the Senator forced her out of her suite at the Grand by causing all the doors of her rooms to be removed from the hinges. She spent nearly two years in a vain effort to win back the Senator's love before she resorted to the courts.

The opening legal gun was fired on September 8, 1883, when, claiming to be the Senator's wife, Sarah caused Sharon to be arrested on a charge of adultery. This puzzled and fascinated San Francisco, for Sharon was thought to be a widower. However, Sarah produced and gave to the newspapers what purported to be a written marriage contract between herself and the Senator,

dated August 25, 1880, by which the parties took each other to be husband and wife, and acknowledged that they were husband and wife, although Sarah agreed not to make known the contents of the paper or its existence for two years from its date. The criminal charge of adultery was dropped, but it, together with demands for money made on Sarah's behalf, served to forewarn Sharon of what was coming. Asserting his Nevada citizenship, he promptly commenced a suit in equity in the United States Circuit Court in San Francisco praying for a decree that Sarah was not and never had been his wife, and enjoining Sarah from claiming to be his wife, determining that the purported marriage contract was a fraud and a forgery, and requiring Sarah to deliver up the contract for cancellation.

THE LEGAL ISSUES

At this time, the California law did not require a formal marriage ceremony or solemnization. The Civil Code required mutual consent to marry, but Section 55, as an alternative to solemnization, declared that "a mutual assumption of marital rights, duties or obligations" was sufficient to create the status of matrimony. After the falling out with Senator Sharon, Sarah sought advice from a cunning and sinister old negress named Mammy Pleasant, who ultimately supplied the sinews of war in the divorce litigation to the extent of at least $5,000.00. Mammy Pleasant in turn consulted an attorney named George Washington Tyler who, although no existing contract was submitted to him, gave his written opinion as to what kind of document would constitute a legal marriage contract under the laws of California. After giving his views, Tyler made a contract with Sarah whereby he agreed to act as her attorney in consideration of one-half of all she recovered from Senator Sharon. On November 1, 1883, Sarah commenced an action for divorce against Sharon. Sarah's proof of intercourse between herself and the Senator after the date of the marriage contract, and the Senator's subsequent adultery and desertion, was more than adequate, hence the crux of her action was the marriage contract as, of course, she could not attain the desired fruits of a divorce unless she had been a wife. Thus, the validity of the marriage contract and the construction of the rather vague language of Section 55 of the Civil Code became the fundamental issues in the state and federal courts.

Although Sharon's action in the federal court was commenced

first, the divorce action was tried first, before Judge J. F. Sullivan. "Trial by newspaper" had made great strides even in the nineteenth century—reporters were present at the taking of depositions, witnesses gave interviews stating how they planned to testify, and evidence was frequently published in the newspapers before it was presented in court. San Francisco and much of the country reveled in and laughed for months at the spicy, bizarre and sensational testimony. Although she had a battery of six attorneys, the tempestuous Sarah did not hesitate to take matters into her own hands whenever she felt she might gain anything by so doing. She argued and stormed with the judge and her own counsel, not to mention Sharon and his counsel, and she was quoted as having threatened to "shoot Sharon on sight" if the latter succeeded in having the marriage contract declared a forgery.

THE ETHICS OF COUNSEL

Personal collisions between the attorneys were narrowly averted, and Judge Terry, who became one of Sarah's counsel on the second day of the trial, was not the least offender. Charges of bribery, witness-buying and perjury were an almost daily occurrence, and several witnesses were indicted, and some were actually convicted, of perjury. During the trial Sarah's agent, an Australian named Neilson, sued Sharon for slander and a little later Sarah brought an embezzlement charge against Neilson. The grand jury indicted both Sarah and Neilson on charges of forgery, perjury and conspiracy. Perhaps the most extraordinary performance by counsel was this: Sharon's chief counsel, General Barnes, suspected that there was a secret agreement between Sarah's chief counsel, George Washington Tyler, and a man named Gumpel, one of Sarah's handwriting experts, by the terms of which the expert was to swear to the genuineness of Sharon's purported signature on the marriage contract, and in the event of Sarah's success, receive a very large cut of the booty. Tyler, knowing of his opponent's well-advertised suspicions, faked a document such as General Barnes thought was in existence, and caused his law clerk to reveal his supposed discovery of the contract to Barnes, and offer to steal the document from Tyler's desk for $30,000.00. Barnes actually paid Tyler's clerk $25,000.00 of Sharon's money for the fake agreement, whereupon the clerk absconded. He abandoned the law in favor of a steam laundry in Honolulu, but lost the greater part of his ill-gotten for-

tune in this venture. When the high-priced "agreement" was exhibited in court, Tyler, with great glee, demonstrated that it was a fake and a decoy. Tyler was promptly indicted for obtaining the $25,000.00 under false pretenses, but two different juries disagreed and the prosecution was dropped.

The testimony concerning the discarded Sarah's efforts to regain the Senator's love before she placed the controversy *in gremio legis* was the most ludicrous and fascinating of the eighty-day trial. It appeared that she had scoured San Francisco in search of fortune-tellers and sorcerers, and that her belief in the efficacy of love charms and potions and the possibilities of black magic was unshakable. One old negro sorceress testified that she had given Sarah a love draught consisting of nine drops of molasses, nine pinches of sugar and the rest black tea. Sarah was to give the Senator a spoonful three times a day or oftener—the more he took, the more he was supposed to love her. However, Sarah soon returned, a dissatisfied customer, with a pair of the Senator's socks. The old negress tied the toes of the socks into a very hard knot, and returned them to Sarah with instructions to dip the toes in whisky and wear them around her left knee, because the left leg was nearer the heart. The testimony of another witness showed that Sarah had taken a young pigeon, cut it open, removed its heart, and stuck nine pins in it, after which she wore in around her neck in a little red silk bag.

This line of testimony reached its zenith in the story of another fortune-teller who testified that she had advised a graveyard charm; that Sarah must wear about her person for nine days and nine nights, certain specific articles of clothing of the man whom she desired to marry, and that then she should deposit them in a newly made grave before the burial of the body. When the buried clothing rotted, the man whom she desired to marry would either marry her or die. The defense adduced evidence that Sarah had carried out her instructions. They then procured the Health Officer to open a certain recent grave in the San Francisco Masonic Cemetery, and from the coffin there was removed a package which when opened in court was found to contain a sock, a portion of a shirttail and a shirt collar belonging to Sharon. When Sharon's counsel exhibited the clothing in court to Sarah she denied that she had ever seen any of it before.

VICTORY FOR SARAH

At the conclusion of the trial Judge Sullivan stated that Sarah's testimony had been wilfully false in several respects, that she had availed herself of the aid of false testimony from other witnesses, and that at least one document produced by Sarah was a fabrication. He found, among other things, that the parties had never introduced or referred to each other in the presence of others as husband and wife; and that they had never publicly assumed a marital relationship. Nonetheless, he concluded that the marriage contract was genuine, that the parties had lived together "in the way usual with married people, although their cohabitation was kept secret," and that the requirement of mutual assumption of marital rights, duties and obligations had been met. On the day before Christmas, 1884, he granted Sarah an interlocutory decree of divorce on the ground of desertion. He held that Sarah was entitled to a division of the community property, and appointed a referee to take an account of that juicy plum. Emboldened by this success, Sarah's enterprising attorneys promptly applied for alimony and attorneys' fees, and Judge Sullivan awarded $2,500.00 a month alimony to Sarah and $55,000.00 to her troupe of attorneys. Sharon promptly appealed from the divorce judgment and from the order directing the payment of alimony and counsel fees.

A WIFE BY ONE VOTE

In January, 1888, by a four to three decision, the Supreme Court affirmed the judgment of divorce. The majority appeared to decide that cohabitation, coupled with the direct evidence of previous consent which was furnished by the marriage contract, was sufficient to prove marriage; that under Section 55 of the Civil Code evidence of cohabitation constituted proof of a mutual assumption of marital rights and duties, and that it was not indispensable to the validity of the marriage that the relationship between the parties be made public. The court did not consider whether or not the marriage contract was a forgery, since none of the evidence was before it.

However, the court reversed the order for payment of counsel fees. The court concluded that six lawyers were not necessary

to the prosecution of Sarah's cause, that the $55,000.00 awarded was too large, that in the light of Tyler's contingent fee contract with Sarah, he was not entitled to seek compensation from another source, and that in any event the trial court had erred in ordering the payment of attorneys' fees directly to counsel. The court also reduced Sarah's alimony from $2,500.00 to $500.00 per month on the ground that the latter figure was consistent with the amount Sarah had been receiving by agreement while she lived with Sharon, and was "amply sufficient for her comfortable support and to supply her with many of the appliances of wealth."

On the whole, Sarah's gamble had been highly successful. True, there was still pending Sharon's appeal from the order denying a new trial and Sharon's action in the United States District Court was something of a black cloud on the horizon. Nevertheless, the prize of five million dollars appeared close to realization.

(To be concluded in an early issue)

SILVER MEMORIES

(Continued from page 107)

continental railroads serving Los Angeles to construct a union station and terminal facilities exceeding $28,000,000 in cost. The Court held that the construction of a union terminal requires a certificate of the Interstate Commerce Commission.

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Paul Coté has been chosen as Senior Past-President of Rho Alpha Gamma legal fraternity of St. Vincent's College of Law at a recent election. The office was left vacant by the tragic death of **Vincent A. Costello.** Other officers elected were: President, **Bayard R. Rountree;** Vice-President, **Thomas H. McGovern;** Secretary, **Warren W. Murphy;** Treasurer, **William H. McCartney;** Warden, **Clarence Hull;** Adrapadon, **Frank Bird,** and Pomein, **Carl Roggio.**

* * *

Controversy over the question of whether a married person should be privileged to attend high school has arisen in Spokane where a married student was suspended. Testimony of school officials is to the effect that presence of a married student in high school has a demoralizing effect upon other students.